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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/943,904	08/30/2001	Vincent J. Zimmer	42390P11190	2083

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EXAMINER

MANOSKEY, JOSEPH D

ART UNIT

PAPER NUMBER

2113

DATE MAILED: 11/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/943,904

Applicant(s)

ZIMMER ET AL.

Examiner

Joseph Manoskey

Art Unit

2113

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 10-18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. "Machine-readable medium" is considered non-statutory subject matter. The Examiner suggests to that the Applicant that the limitation be changed to read "Computer-readable medium".

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 1-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Christeson et al., U.S. Patent 5,579,522, hereinafter referred to as "Christeson".

5. Referring to claim 1, Christeson teaches a method of dynamically updating BIOS firmware parts that includes both normal BIOS and recovery BIOS, this is interpreted as adding an initiation module to a BIOS firmware of a computing system having an extensible firmware architecture, the BIOS firmware having a plurality of initiation modules with initiation modules required for the recovery of the computing system designated as recovery initiation modules and other initiation modules designated as non-recovery modules (See Col. 1, lines 25-45 and Col. 2, lines 15-57). Christeson also teaches the verification of the flash memory area, this is interpreted as automatically evaluating the initiation module (See Col. 3, lines 26-35). Finally Christeson discloses updating the recovery BIOS, this is interpreted as designating the initiation module if it is determined that the initiation is required for recovery of the computing system (See Col. 2, lines 52-57).

6. Referring to claim 2, Christeson discloses have a block containing all the recovery BIOS, and all parts of the BIOS in the recovery block are part of the recovery BIOS, this is interpreted as designating the initiation module as a recovery initiation module if it is determined that a recovery initiation module is required for recovery of the computing system (See Col. 2, lines 52-57).

7. Referring to claim 3, Christeson teaches a recovery mode that executes the recovery BIOS, this is interpreted as executing only recovery initiation modules in the event of a recovery restart (See Col. 3, lines 16-25).

8. Referring to claim 4, Christeson discloses updating the BIOS, this interpreted as an updated recovery initiation module added to the BIOS firmware to replace an outdated recovery initiation module (See Col. 2, lines 15-20).

9. Referring to claim 5, Christeson teaches the verification of the flash memory area, this is interpreted as automatically evaluating all recovery initiation modules (See Col. 3, lines 26-35). Christeson discloses updating the BIOS including recovery BIOS, this interpreted as removing the recovery initiation module designation from all initiation modules designated as recovery initiation modules solely due to dependence thereon by the outdated recovery initiation module (See Col. 2, lines 15-20 and lines 52-57).

10. Referring to claim 6, Christeson teaches locking the recovery BIOS, this is interpreted as wherein the recovery initiation modules are rendered unalterable (See Col. 2, lines 52-54).

11. Referring to claim 7, Christeson discloses the recovery BIOS being located in non-volatile memory, this is interpreted as the initiation module reside in a fault-tolerant firmware volume (See Col. 2, lines 15-20).

12. Referring to claim 8, Christeson teaches a block of code reference numbers "202", "203", "204" and "205" that add up to 64KB and contains the recovery BIOS, this

is interpreted as the recovery initiation modules contained in a 64 kilobyte block of code (See Fig. 2).

13. Referring to claim 9, Christeson discloses the recovery being used because of a corruption from power failure or other reasons, this is interpreted as recovery of the computing system is necessitated by an event selected from the group consisting of power failure, hardware failure, and security error (See Col. 3, lines 1-4).

14. Referring to claim 10, Christeson teaches a computer readable medium containing instructions when executed on processor performs a method of dynamically updating BIOS firmware parts that includes both normal BIOS and recovery BIOS, this is interpreted as adding an initiation module to a BIOS firmware of a computing system having an extensible firmware architecture, the BIOS firmware having a plurality of initiation modules with initiation modules required for the recovery of the computing system designated as recovery initiation modules and other initiation modules designated as non-recovery modules (See Col. 1, lines 25-45 and Col. 2, lines 15-57). Christeson also teaches the verification of the flash memory area, this is interpreted as automatically evaluating the initiation module (See Col. 3, lines 26-35). Finally Christeson discloses updating the recovery BIOS, this is interpreted as designating the initiation module if it is determined that the initiation is required for recovery of the computing system (See Col. 2, lines 52-57).

15. Referring to claim 11, Christeson discloses have a block containing all the recovery BIOS, and all parts of the BIOS in the recovery block are part of the recovery BIOS, this is interpreted as designating the initiation module as a recovery initiation module if it is determined that a recovery initiation module is required for recovery of the computing system (See Col. 2, lines 52-57).

16. Referring to claim 12, Christeson teaches a recovery mode that executes the recovery BIOS, this is interpreted as executing only recovery initiation modules in the event of a recovery restart (See Col. 3, lines 16-25).

17. Referring to claim 13, Christeson discloses updating the BIOS, this interpreted as an updated recovery initiation module added to the BIOS firmware to replace an outdated recovery initiation module (See Col. 2, lines 15-20).

18. Referring to claim 14, Christeson teaches the verification of the flash memory area, this is interpreted as automatically evaluating all recovery initiation modules (See Col. 3, lines 26-35). Christeson discloses updating the BIOS including recovery BIOS, this interpreted as removing the recovery initiation module designation from all initiation modules designated as recovery initiation modules solely due to dependence thereon by the outdated recovery initiation module (See Col. 2, lines 15-20 and lines 52-57).

19. Referring to claim 15, Christeson teaches locking the recovery BIOS, this is interpreted as wherein the recovery initiation modules are rendered unalterable (See Col. 2, lines 52-54).

20. Referring to claim 16, Christeson discloses the recovery BIOS being located in non-volatile memory, this is interpreted as the initiation module reside in a fault-tolerant firmware volume (See Col. 2, lines 15-20).

21. Referring to claim 17, Christeson teaches a block of code reference numbers "202", "203", "204" and "205" that add up to 64KB and contains the recovery BIOS, this is interpreted as the recovery initiation modules contained in a 64 kilobyte block of code (See Fig. 2).

22. Referring to claim 18, Christeson discloses the recovery being used because of a corruption from power failure or other reasons, this is interpreted as recovery of the computing system is necessitated by an event selected from the group consisting of power failure, hardware failure, and security error (See Col. 3, lines 1-4).

23. Referring to claim 19, Christeson teaches a apparatus for dynamically updating BIOS firmware parts that includes both normal BIOS and recovery BIOS, this is interpreted as adding an initiation module to a BIOS firmware of a computing system having an extensible firmware architecture, the BIOS firmware having a plurality of



initiation modules with initiation modules required for the recovery of the computing system designated as recovery initiation modules and other initiation modules designated as non-recovery modules (See Col. 1, lines 25-45 and Col. 2, lines 15-57). Christeson also teaches the verification of the flash memory area, this is interpreted as automatically evaluating the initiation module (See Col. 3, lines 26-35). Finally Christeson discloses updating the recovery BIOS, this is interpreted as designating the initiation module if it is determined that the initiation is required for recovery of the computing system (See Col. 2, lines 52-57).

24. Referring to claim 20, Christeson discloses have a block containing all the recovery BIOS, and all parts of the BIOS in the recovery block are part of the recovery BIOS, this is interpreted as designating the initiation module as a recovery initiation module if it is determined that a recovery initiation module is required for recovery of the computing system (See Col. 2, lines 52-57).

25. Referring to claim 21, Christeson teaches a recovery mode that executes the recovery BIOS, this is interpreted as executing only recovery initiation modules in the event of a recovery restart (See Col. 3, lines 16-25).

26. Referring to claim 22, Christeson discloses updating the BIOS, this interpreted as an updated recovery initiation module added to the BIOS firmware to replace an outdated recovery initiation module (See Col. 2, lines 15-20).

27. Referring to claim 23, Christeson teaches the verification of the flash memory area, this is interpreted as automatically evaluating all recovery initiation modules (See Col. 3, lines 26-35). Christeson discloses updating the BIOS including recovery BIOS, this interpreted as removing the recovery initiation module designation from all initiation modules designated as recovery initiation modules solely due to dependence thereon by the outdated recovery initiation module (See Col. 2, lines 15-20 and lines 52-57).

28. Referring to claim 24, Christeson teaches locking the recovery BIOS, this is interpreted as wherein the recovery initiation modules are rendered unalterable (See Col. 2, lines 52-54).

29. Referring to claim 25, Christeson discloses the recovery BIOS being located in non-volatile memory, this is interpreted as the initiation module reside in a fault-tolerant firmware volume (See Col. 2, lines 15-20).

30. Referring to claim 26, Christeson teaches a block of code reference numbers "202", "203", "204" and "205" that add up to 64KB and contains the recovery BIOS, this is interpreted as the recovery initiation modules contained in a 64 kilobyte block of code (See Fig. 2).

31. Referring to claim 27, Christeson discloses the recovery being used because of a corruption from power failure or other reasons, this is interpreted as recovery of the computing system is necessitated by an event selected from the group consisting of power failure, hardware failure, and security error (See Col. 3, lines 1-4).

### ***Conclusion***

32. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following are examples of BIOS update systems and recovery BIOS systems.

U.S. Patent 5,930,504 to Gabel

U.S. Patent 5,951,686 to McLaughlin et al.

U.S. Patent 5,964,873 to Choi

U.S. Patent 6,122,733 to Christeson et al.

U.S. Patent 6,167,532 to Wisecup

U.S. Patent 6,536,038 to Ewertz et al.

U.S. Patent 6,757,838 to Chaiken et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Manoskey whose telephone number is (571) 272-3648. The examiner can normally be reached on Mon.-Fri. (7:30am to 4pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (571) 272-3645. The fax phone


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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JDM

November 9, 2004

  
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